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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,630	12/14/2001	William R. Matz	36968/265389	9447

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EXAMINER

OUELLETTE, JONATHAN P

ART UNIT

PAPER NUMBER

3629

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/017,630	<b>Applicant(s)</b> MATZ ET AL.	
	<b>Examiner</b> Jonathan Ouellette	<b>Art Unit</b> 3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The Request filed on 1/3/2006 for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/017,630 is acceptable and a RCE has been established. An action on the RCE follows.

### ***Response to Amendment***

2. Claims 1-20 have been cancelled, and Claims 38-53 have been added; therefore, Claims 21-53 remain pending in application 10/017,630.

### ***Claim Rejections - 35 USC § 112***

3. The rejection of Claim 47 under 35 U.S.C. 112, second paragraph, is withdrawn due to Applicant's amendments.

### ***Claim Rejections - 35 USC § 101***

4. The rejection of Claim 21 under 35 U.S.C. 101 is withdrawn due to Applicant's amendments.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Hendricks et al. (US 6,463,585 B1).**
7. As per **independent Claim 21**, Hendricks discloses a processor-implemented method for predicting content, comprising: receiving content from a local content database (C13 L45-49, local programming – database inherent to programming storage and transmission); receiving content from a nation content database (C13 L6-45, operation center programming – database inherent to programming storage and transmission); receiving subscriber actions from a subscriber-action database, the subscriber action database storing information related to buttons pushed by a subscriber at a remote control (*Fig.3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control*) while viewing content (C11 L35-65); and processing the content received from the local content database, the content received from the national content database, and the subscriber actions to predict future buttons pushed by the subscriber (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits).
8. As per Claim 22, Hendricks discloses merging content received from the local content database, the content received from the nation content database, and the information related to buttons pushed by the subscriber to create subscriber choice information.

9. As per Claim 23, Hendricks discloses at least one of i) correlating the content received from the local content database with the information related to buttons pushed by the subscriber and ii) correlating the content received from the nation content database with the information related to buttons pushed by the subscriber.
10. As per Claim 24, Hendricks discloses at least one of i) categorizing the content received from the local content database and ii) categorizing the content received from the national content database.
11. As per Claim 25, Hendricks discloses wherein the step of processing the content received from the local content database, the content received from the national content database, and the subscriber actions comprises at least one of i) analyzing buttons pushed during preceding content and ii) analyzing buttons pushed during succeeding content.
12. As per new Claim 38, Hendricks discloses creating tailored media content that corresponds to the predicted future buttons pushed.
13. As per new Claim 39, Hendricks discloses wherein the tailored media content comprises content bundled with an advertisement for a product or service.
14. As per new Claim 40, Hendricks discloses distributing the tailored media content to the subscriber.
15. As per new Claim 41, Hendricks discloses tracking popularity of the tailored media content for a period of time.
16. As per new Claim 42, Hendricks discloses creating tailored media content that corresponds to past subscriber actions.

17. As per new Claim 43, Hendricks discloses creating tailored media content that corresponds to a demographic of the subscriber.
18. As per new Claim 44, Hendricks discloses creating tailored media content that corresponds to a purchasing history of the subscriber.
19. As per new Claim 48, Hendricks discloses providing the subscriber a log of received content.
20. As per new Claim 50, Hendricks discloses wherein the content received by the subscriber comprises an amount of time that an advertisement was received.
21. As per new Claim 51, Hendricks discloses analyzing the subscriber actions to determine when the subscriber initially receives an entire advertisement but subsequently only receives portion of the advertisement.
22. As per **independent Claim 27**, Hendricks discloses a system for predicting content, comprising: a head end facility receiving i) local content from a local content database (C13 L45-49, local programming), ii) national content from a national content database (C13 L6-45, operation center programming), and iii) subscriber actions from a subscriber-action database, the subscriber-action database storing information related to buttons pushed by a subscriber at a remote control (*Fig. 3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control*) while viewing content (C11 L35-65); a processor processing the local content, the national content, and the subscriber actions to predict future buttons pushed by the subscriber; the processor creating tailored media content that corresponds to the predicted future buttons pushed; and a server distributing the tailored media content to the subscriber (C11 L35-65,

develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits).

23. As per Claim 28, Hendricks discloses wherein the processor at least one of i) correlates the local content with the information related to buttons pushed by the subscriber and ii) correlates the national content with the information related to buttons pushed by the subscriber.
24. As per Claim 29, Hendricks discloses wherein the processor at least one of i) categorizes the local content and ii) categorizes the nation content.
25. As per Claim 30, Hendricks discloses wherein the processor at least one of i) analyzes buttons pushed during preceding content and ii) analyzes buttons pushed during succeeding content.
26. As per **independent Claim 32**, Hendricks discloses a computer program product comprising a computer readable medium including instructions for performing the steps: analyzing content from a local content database (C13 L45-49, local programming); analyzing content from a nation content database (C13 L6-45, operation center programming); analyzing subscriber actions from a subscriber-action database, the subscriber action database storing information related to buttons pushed by a subscriber at a remote control (*Fig. 3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control*) while viewing content (C11 L35-65); and predicting future buttons pushed by the subscriber (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits).

27. As per Claim 33, Hendricks discloses instructions for performing the step of merging information related to local programming, information related to national programming, and information related to buttons pushed by the subscriber to create subscriber choice information.
28. As per Claim 34, Hendricks discloses instructions for performing at least one of the steps of i) correlating information related to local programming with the information related to buttons pushed by the subscriber and ii) correlating information related to national programming with the information related to buttons pushed by the subscriber.
29. As per Claim 35, Hendricks discloses instructions for performing at least one of the steps of i) categorizing information related to local programming and ii) categorizing information related to national programming.
30. As per Claim 36, Hendricks discloses instructions for performing at least one of the steps of i) analyzing actions taken during proceeding content and ii) analyzing buttons pushed during succeeding content.
31. As per new Claim 52, Hendricks discloses instructions for accessing the subscriber actions taken by the subscriber while accessing and viewing content.
32. As per new **independent Claim 53**, Hendricks discloses a device, comprising: a processor communicating with memory, the processor executing software stored in the memory to receive content from a local content database (C13 L45-49, local programming); receive content from a nation content database (C13 L6-45, operation center programming); communicate subscriber actions comprising information related to buttons pushed by a subscriber at a remote control (*Fig. 3, Remote/Customer Interface,*



*Upstream Interactivity; C10 L38-60, subscriber interface, remote control)* while viewing the content (C11 L35-65); and predict future buttons pushed by the subscriber (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits).

***Claim Rejections - 35 USC § 103***

33. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

34. **Claims 26, 31, 37, 45-47, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of Ludtke et al. (US 6,202,210).**

35. As per Claims 26, 31, 37, and 45, Hendricks fails to expressly disclose wherein the processor receives buttons pushed by the subscriber to receive an alternate source of content.

36. Ludtke teaches monitoring viewer histories to include programming from additional AV sources/DVD player for marketing purposes (Fig.5, C7 L25-39).

37. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein the processor receives actions taken by the subscriber to receive an alternate source of content, as disclosed by Ludtke in the system disclosed by Hendricks, for the advantage of providing a method/system for predicting

content, with the ability to increase system effectiveness by analyzing customer viewing histories on all available programming sources.

38. As per new Claim 46, Hendricks and Ludtke disclose presenting types of content available to the subscriber during a period of time, with the types of content comprising an alternate video source.

39. As per new Claim 47, Hendricks and Ludtke disclose wherein the step of presenting the types of content available to the subscriber during the period of time comprises integrating content available from the alternate video source into an electronic programming guide.

40. As per new Claim 49, Hendricks and Ludtke disclose merging the content received from the local content database, the content received from the national content database, the subscriber actions, and information related to an alternate video source to determine what content is received by the subscriber.

### *Response to Arguments*

41. Applicant's arguments filed 1/3/2006, with respect to Claims 21-53, have been considered but are not persuasive. The rejection will remain as **Non-Final** based on the cited prior art.

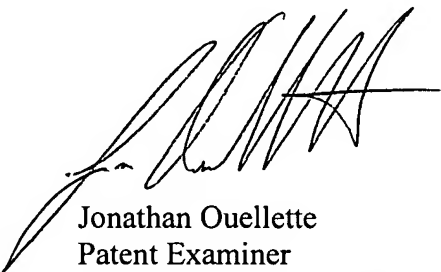
42. The Applicant has made the argument that the cited prior art fails to teach or suggest receiving subscriber actions related to buttons pushed by a subscriber at a remote control while viewing content.

43. However, Hendricks discloses monitoring user interactivity through the use of a subscriber interface with the system (Fig.3, Remote/Customer Interface, Upstream Interactivity), wherein the interface can include buttons on a remote control (C10 L38-60, subscriber interface, remote control).

*Conclusion*

44. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.
45. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.
46. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (703) 308-1202.

March 12, 2006



Jonathan Ouellette  
Patent Examiner  
Technology Center 3600